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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF MICHIGAN**

7 Benjamin Royal, et al.,

Case No. 2:20-cv-11947-AJT-DRG
Hon. Arthur J. Tarnow

8 Plaintiffs,

9 vs.

10 Detroit Public Schools Community
District (DPSCD) and DPSCD
11 Superintendent Nikolai Vitti in his
official capacity,

12 Defendants.

**PLAINTIFFS' MOTION FOR
EMERGENCY EX PARTE
TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

13
14 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSELS OF
15 RECORD:

16 Now come the Plaintiffs, by and through counsel, and, for the reasons
17 outlined in the accompanying Brief, hereby move this Honorable Court under Rule
18 65 of the Federal Rules of Civil Procedure to grant the following ex parte relief:
19

**PLAINTIFFS' MOTION FOR EMERGENCY EX PARTE TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

1. Temporary restraining order directing Defendants Detroit Public School Community District (DPSCD) and Superintendent Nikolai Vitti to not conduct in-person instruction, until Defendants demonstrate that they have developed and are implementing a plan consistent with Plaintiffs' constitutional Due Process and Equal Protection rights and civil rights, and with science;
2. Temporary restraining order directing Defendants to send a letter out to all DPSCD families and staff explaining the importance for DPSCD students to get tested for COVID-19, given scientific evidence that 31 percent of Florida's children are testing positive, there is growing evidence of complications and long-term delibitation even among asymptomatic children, and young people aged 10 to 19 are the most effective spreaders of COVID-19. Any school opening plan must have, as a prerequisite, knowledge of the extent to which COVID-19 has spread among DPSCD children, teachers, and staff;
3. Order Defendants to show cause as to why this temporary restraining order should not be replaced by permanent injunction.

By Plaintiffs' Attorneys,
UNITED FOR EQUALITY AND
AFFIRMATIVE ACTION LEGAL DEFENSE
FUND (UEAALDF)

PLAINTIFFS' MOTION FOR EMERGENCY EX PARTE TEMPORARY
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Dated: July 20, 2020

PLAINTIFFS' MOTION FOR EMERGENCY EX PARTE TEMPORARY
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As detailed further in the Plaintiffs' Complaint, unless this Court intervenes, the Detroit Public Schools Community District's (DPSCD's) decision to reopen the district with little to no planning to protect students, teachers, staff, and their families from contracting COVID-19 will result in some of the young people of Detroit being killed by COVID-19, countless numbers of Detroiters being infected with Coronavirus/COVID-19, and about 10 percent of those people dying from the virus.

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EMERGENCY EX
PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

ARGUMENT

A plaintiff seeking a preliminary injunction must establish that he or she is likely to succeed on the merits, is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his or her favor, and that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.* 555 U.S. 7, 20 (2008).

Plaintiffs Will Suffer Irreparable Injury If Relief Is Not Granted

COVID-19 leads to serious illness and death, and there is no vaccine or cure. It spreads through water droplets and is possibly airborne. Children, especially young children, are not able to comply with CDC recommendations of social distancing.

Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases), has repeatedly stated that we know almost nothing about how the virus affects children and it is unsafe to act on largely anecdotal evidence.¹ What is known is that COVID-19 can cause deadly inflammation conditions in

¹ “We don’t know everything about this virus and we really better be pretty careful, particularly when it comes to children... I think we better be careful [that] we are not cavalier in thinking that children are completely immune from the deleterious effects.” (“Fauci urges caution on schools, warns against ‘cavalier’ idea that children are immune from COVID-19” Fox6now.com, May 12, 2020. Available at: <https://fox6now.com/2020/05/12/fauci-urges-caution-on-schools-warns-against-cavalier-idea-that-children-are-immune-from-covid-19/>)

1 children and can result in lasting neurological and brain damage.² Florida reports
 2 that 31 percent of the state’s children are testing positive for COVID-19. Dr. Alina
 3 Alonso, Palm Beach County’s health department director, warns that much is
 4 unknown about the long-term health consequences for children who catch COVID-
 5 19. X-rays have revealed the virus can cause lung damage in people without severe
 6 symptoms. Dr. Alonso told Florida officials: “They are seeing there is damage to
 7 the lungs in these asymptomatic children... We don’t know how that is going to
 8 manifest a year from now or two years from now,” Alonso said. “Is that child going
 9 to have chronic pulmonary problems or not?”³ It might be possible to prevent future
 10 re-infection: a recent study on COVID-19 published by the Royal College in
 11 England, shows that contracting the virus does not result in immunity from future
 12 COVID-19 infections.⁴

15
 16 ² “Some kids suffer mysterious brain damage from coronavirus, study finds.” *New*
 17 *York Post*, July 6, 2020. Available at: [https://nypost.com/2020/07/06/some-kids-](https://nypost.com/2020/07/06/some-kids-suffer-mysterious-brain-damage-from-coronavirus-study-finds/)
[suffer-mysterious-brain-damage-from-coronavirus-study-finds/](https://nypost.com/2020/07/06/some-kids-suffer-mysterious-brain-damage-from-coronavirus-study-finds/)

18 ³ Nearly one-third of children tested for COVID in Florida are positive. Palm
 19 Beach County’s health director warns of risk of long-term damage.” *South Florida*
 20 *Sun Sentinel*, July 14, 2020. Available at: [https://www.sun-](https://www.sun-sentinel.com/coronavirus/fl-ne-pbc-health-director-covid-children-20200714-xcdall2tsrd4riim2nwokvmsxm-story.html)
[sentinel.com/coronavirus/fl-ne-pbc-health-director-covid-children-20200714-](https://www.sun-sentinel.com/coronavirus/fl-ne-pbc-health-director-covid-children-20200714-xcdall2tsrd4riim2nwokvmsxm-story.html)

21 ⁴ The study from the UK shows that individuals who fight off COVID-19 see their
 22 number of antibodies peak three months after the onset symptoms but then swiftly
 23 decline, in some cases becoming undetectable. (“Immunity to Covid-19 could be
 24 lost in months, UK study suggests,” *The Guardian*, July 12, 2020
[https://www.theguardian.com/world/2020/jul/12/immunity-to-covid-19-could-be-](https://www.theguardian.com/world/2020/jul/12/immunity-to-covid-19-could-be-lost-in-months-uk-study-suggests)
[lost-in-months-uk-study-suggests](https://www.theguardian.com/world/2020/jul/12/immunity-to-covid-19-could-be-lost-in-months-uk-study-suggests))

Children have been hospitalized, placed in intensive care, and have died from COVID-19. The virus's impact on children and its ability to pass on to adults via children is only beginning to be understood. The CDC published a study on April 2, 2020, which stated:

Information on hospitalization status was available for 745 (29%) cases in children aged <18 years and 35,061 (31%) cases in adults aged 18–64 years. Among children with COVID-19, 147 (estimated range = 5.7%–20%) were reported to be hospitalized, with 15 (0.58%–2.0%) admitted to an ICU (Figure 2). Among adults aged 18–64 years, the percentages of patients who were hospitalized (10%–33%), including those admitted to an ICU (1.4%–4.5%), were higher. Children aged <1 year accounted for the highest percentage (15%–62%) of hospitalization among pediatric patients with COVID-19. Among 95 children aged <1 year with known hospitalization status, 59 (62%) were hospitalized, including five who were admitted to an ICU. The percentage of patients hospitalized among those aged 1–17 years was lower (estimated range = 4.1%–14%), with little variation among age groups (Figure 2).⁵

Children in Michigan, Florida, and New York have died from COVID-19.⁶ In Texas, as of July 3 about 1,335 people had tested positive for COVID-19 in its child

⁵ “Coronavirus Disease 2019 in Children in United States, February 12–April 2, 2020,” CDC.gov, April 10, 2020

<https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm>

⁶ “5-year-old with rare complication becomes first Michigan child to die of COVID-19,” *Detroit News*, April 19, 2020

<https://www.detroitnews.com/story/news/local/detroit-city/2020/04/19/5-year-old-first-michigan-child-dies-coronavirus/5163094002/>. “What we know about

coronavirus risks to school age children,” CNN.com, July 10, 2020,

<https://www.cnn.com/2020/07/10/health/coronavirus-school-age-children-wellness>

1 care facilities. 894 were staff members and 441 were children.⁷ Researchers have
 2 reported finding nearly 300 cases of an alarming apparent side effect of COVID-19
 3 in children called multisystem inflammation syndrome, or MIS-C, sometimes two
 4 to four weeks after infection.⁸ In one study, MIS-C caused 80% of children to
 5 require intensive care, 20% required mechanical ventilation, and 2% died.⁹
 6

7 A Rutgers University study focused on 48 children and young adults
 8 (newborns to 21 years old) in ICUs due to COVID-19 in March and April found
 9 that more than 80 percent had chronic underlying conditions such as immune
 10 suppression, obesity, diabetes, seizures, or chronic lung disease.¹⁰ It is universally
 11 accepted that in Detroit, a socioeconomically-disadvantaged area, children
 12 disproportionately suffer from these and other comorbidities.
 13

14 DPSCD's guidelines only recommend COVID-19 testing of students,
 15 teachers, and staff after they begin to show symptoms of it. But the CDC says that
 16

17 ⁷ "Texas coronavirus cases top 1,300 from child care facilities alone," CNN.com,
 18 July 6, 2020, [https://www.cnn.com/2020/07/06/health/texas-coronavirus-cases-](https://www.cnn.com/2020/07/06/health/texas-coronavirus-cases-child-care-facilities/index.html)
 19 [child-care-facilities/index.html](https://www.cnn.com/2020/07/06/health/texas-coronavirus-cases-child-care-facilities/index.html)

20 ⁸ "Researchers report nearly 300 cases of inflammatory syndrome tied to Covid-19
 21 in kids," June 29, 2020, [https://www.statnews.com/2020/06/29/nejm-](https://www.statnews.com/2020/06/29/nejm-inflammation-children-covid19-misc/)
 22 [inflammation-children-covid19-misc/](https://www.statnews.com/2020/06/29/nejm-inflammation-children-covid19-misc/)

23 ⁹ "Multisystem Inflammatory Syndrome in U.S. Children and Adolescents," *New*
 24 *England Journal of Medicine*, June 29, 2020
 25 <https://www.nejm.org/doi/full/10.1056/NEJMoa2021680>

26 ¹⁰ "Characteristics and Outcomes of Children With Coronavirus Disease 2019
 27 (COVID-19) Infection Admitted to US and Canadian Pediatric Intensive Care
 28 Units," *JAMA Pediatrics*, May 11, 2020.
 29 <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2766037>

1 after COVID-19 makes contact with a person, it is 2-14 days before symptoms
2 appear. After a test is conducted, it can be days to get the results. In a congregate
3 setting like a school, where people spend several hours a day indoors with recycled
4 air, by the time one gets a positive test result, that person already has had contact
5 with scores of other people who themselves would need to quarantine to contain the
6 virus.
7

8 The U.S. District Court of Michigan rejected a regime of testing only
9 symptomatic inmates and detainees in Michigan jails because it exposed them to an
10 outbreak of COVID-19: "Nor, given the percentage of asymptomatic COVID-19
11 cases and the virus' incubation period of up to fourteen days, can Respondents
12 reasonably assert, as they do, that there are no COVID-19 cases in CCCF; they can
13 only allege that there are no confirmed cases. *By the time a case is confirmed, it will*
14 *almost certainly be too late to protect [a detainee's] constitutional rights."* *Malam*
15 *v. Adducci*, Case No. 5:20-cv-10829, (E.D. Mich. Apr. 5, 2020), at *36 (emphasis
16 added).
17

18 It is certain that, among the more than 2,000 untested students and school
19 staff in DPSCD summer school, some have the virus and will pass it on to others,
20 and that in weeks' time the first positive results will emerge from DPSCD summer
21 school. By the time positive test results come from DPSCD, it will already be "too
22 late."
23

Reopening the schools in DPSCD will cause a new surge in COVID-19 cases in Detroit. In Israel, the May 17 reopening of schools has been a disaster. Israel now has a higher rate of new COVID-19 cases per capita than even the United States. In the first two weeks of July, 393 kindergartens and schools open for summer programs were shuttered due to cases of COVID-19. Udi Kliner, the deputy director of public-health services for Israel's health ministry, said, "1,400 Israelis were diagnosed with the disease [in June]. Of those, 185 caught it at events such as weddings, 128 in hospitals, 113 in workplaces, 108 in restaurants, bars, or nightclubs, and 116 in synagogues,... while 657—which is to say 47 percent of the total—were infected by the coronavirus in schools."¹¹

Granting a Preliminary Injunction Will Advance the Public Interest

Preventing exposure of children, teachers, and staff and their families to COVID-19, a disease that leads to serious illness and death, prevents an outbreak within DPSCD which in turn prevents a renewed outbreak of COVID-19 among the people of Detroit.

¹¹ "Israeli Data Show School Openings Were a Disaster That Wiped Out Lockdown Gains," *Daily Beast*, July 14, 2020. Available at: <https://www.thedailybeast.com/israeli-data-show-school-openings-were-a-disaster-that-wiped-out-lockdown-gains>

Harm to the Plaintiffs in the Absence of a TRO Outweighs the Harm to Defendants if a TRO Is Granted

The harm to the Plaintiffs if a TRO is not granted is discussed in the Complaint and in this Brief above. The harm to Defendants if a TRO is granted is minimal. Defendants can broaden the online component of their summer-school curricular plans.

Plaintiffs Are Likely to Succeed on the Merits

The Fourteenth Amendment’s Due Process Clause protects citizens from government violation of their substantive due process right to bodily integrity. “In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’ specially protected by the Due Process Clause includes the right[] ... to bodily integrity....”). *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

The Sixth Circuit of the U.S. Court of Appeals has recognized a liberty interest in bodily integrity in circumstances where state action exposed residents of Flint, Michigan to unsafe drinking water. *Guertin v. Michigan*, 912 F.3d 907 (6th Cir. 2019).

With regard to the Flint Water Crisis, the Michigan Constitution’s Due Process clause, which is “coextensive with its federal counterpart,” *Grimes v. Van Hook-Williams*, 302 Mich. App. 521, 530 (2013), recognizes this liberty interest.

1 The Michigan Appeals Court has declared: “We agree with the Court of Claims’
2 conclusion that ‘[s]uch conduct on the part of the state actors, and especially the
3 allegedly intentional poisoning of the water users of Flint, if true, may be fairly
4 characterized as being so outrageous as to be ‘truly conscience shocking.’ ...
5 [V]arious state actors intentionally concealed scientific data and made false
6 assurances to the public regarding the safety of the Flint River water even after
7 they had received information suggesting that the water supply directed to
8 plaintiffs’ homes was contaminated...” *Mays v. Snyder*, 323 Mich. App. 1, ,61
9 (Mich. Ct. App. 2018).

11 Michigan Governor Whitmer’s Executive Order 2020-142 (“the Order,”
12 Exhibit G) provides guidelines for resuming in-person school instruction during the
13 regular 2020-21 school year only. Even then, it mandates school districts to remain
14 closed until their school board adopts and implements a plan consistent with the
15 Order. Defendants DPSCD and Superintendent Vitti went forward with opening its
16 schools before the regular school year, for summer school on July 13, 2020, and
17 without approving the preparedness plan mandated by the Order. The Board of
18 Education adopted the plan on July 14, after school had started. (Exhibit H) Nor has
19 that unapproved Preparedness Plan been implemented consistent with CDC
20 guidelines or with Executive Order 2020-142. (See Figure A.)
21
22
23

FIGURE A

Center for Disease Control and Prevention (CDC) Recommendations (Exhibit B)	DPSCD's Reopening Plan (July 12, 2020) (Exhibit D)	DPSCD Implementation on July 13, 2020
<p>Safety Protocols for Busing and Student Transportation: Listed at "<u>Required</u>" and <u>Priority</u>" (Emphasis added)</p> <ol style="list-style-type: none"> 1. Clean, sanitize, and disinfect equipment including items such as car seats, wheelchairs, walkers, and adaptive equipment being transported to schools daily. 2. Clean and disinfect frequently touched surfaces in the vehicle (e.g., surfaces in the driver's cockpit, hard seats, arm rests, door handles, seat belt buckles, light and air controls, doors and windows, and grab handles) prior to morning routes and prior to afternoon routes. 3. Clean and disinfect transportation vehicles before and after every transit route. Children must not be present when a vehicle is being cleaned. 4. Create a plan for getting 	<p>All of the areas listed (on the left) for safety protocols for busing and student transportation in the DPSCD's Reopening Plan are listed as "not addressed" in the documented due to "limited District resources, capacity, etc." See the DPSCD Reopening Plan, page 29. These requirements and recommendations are included in the Appendix section of the document instead. Id. at 30-31. The following are "notes" listed corresponding to each area of the required guidelines and recommendations.</p> <ol style="list-style-type: none"> 1. Transportation companies will not clean or sanitize personal or school equipment. At best, we can request the cleaning of equipment by bus attendants, but this may require bargaining with the union. 2. District transportation providers will clean and 	<ol style="list-style-type: none"> 1. Cleaning was not done at all. (Declaration of Bus Driver Keyshawn Seibert) 2. Cleaning, sanitizing, and disinfecting were not done during the day of the use of the bus. Drivers were not given disinfectants to clean. Id. 3. Same as No. 2. Id. 4. No plan was created for bus drivers to follow if a student appears to be sick on the bus. Bus drivers were not told what protocol to follow or who to contact in such an emergency. Bus drivers were not told to keep

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

1	students home safely if	disinfect frequently	children to
2	they are not allowed to	touched surfaces at	following social
3	board the vehicle.	minimum twice per day,	distancing
4	5. Require the use of hand	prior to beginning	guidelines or to
5	sanitizer before entering	routes.	keep them in
6	the bus. Hand sanitizer	3. District transportation	safe distance
7	must be supplied on the	providers will clean and	from each other.
8	bus.	disinfect frequently	Id.
9	6. If a student becomes sick	touched surfaces at	5. Hand sanitizers
10	during the day, they must	minimum twice per day,	were not given to
11	not use group	prior to beginning	bus drivers. It
12	transportation to return	routes.	was not required
13	home and must follow	4. Every precaution will be	to use sanitizer
14	protocols outlined above.	taken to transport	before entering
15	If a driver becomes sick	students to school in a	the bus. Id.
16	during the day, they must	manner that supports the	6. Same as No. 4.
17	follow protocols for sick	safety and health of the	Id.
18	staff outlined above and	drivers and other	7. The Status of
19	must not return to drive	students. In the event	ventilation is
20	students.	that a student is visibly	unknown. Bus
21	7. Weather permitting, keep	ill, the driver will	drivers were not
22	doors and windows open	contact dispatch for	given any
23	when cleaning the vehicle	further directions	specific
24	and between trips to let the	including contacting the	instructions or
	vehicles thoroughly air	parent or transporting	information on
	out.	the child to school using	this issue.
	8. Weather permitting, keep	social distancing	8. Same as No. 7.
	doors and windows open	guidelines for	
	when cleaning the vehicle	quarantine.	
	and between trips to let the	5. Hand sanitizer will be	
	vehicles thoroughly air	provided on each yellow	
	out.	bus and District van.	
		6. In the event of a	
		reported illness during	
		the school day, parents	
		will be notified to pick	
		up children from school.	
		Should parent	

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1 transportation be
2 unavailable, the Office
3 of Student
4 Transportation will
5 work on an individual
6 basis with each family
7 to provide a safe route
8 home.

7. To the fullest extent
possible, windows will
be opened to provide
proper ventilation.

8. Weather permitting,
keep doors and
windows open when
cleaning the vehicle and
between trips to let the
vehicles thoroughly air
out.

When a confirmed case has entered a school, regardless of community transmission

Any school in any community might need to implement short-term closure procedures regardless of community spread if an infected person has been in a school building. If this happens, CDC recommends the following procedures regardless of the level of community spread:

Dismiss students and most staff for 2-5 days. This initial short-term dismissal allows time for the local health officials to gain a better understanding of the COVID-19 situation impacting the school. This allows the local health officials to help the school determine appropriate next steps, including whether an extended dismissal duration is needed to stop or slow further spread of COVID-19.

See CDC Interim Guidance for Administrators of US K-12 Schools and Child Care Programs, April 10, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

In the event of confirmed case, the District may close off portions of an entire office area for a period of 24 hours and allow for additional cleaning/disinfecting before reopening.

See DPSCD Reopening Plan, page 9

Cloth Face Coverings

Teach and reinforce use of [cloth face coverings](#). Face coverings may be challenging for students (especially younger students) to wear in all-day settings such as school. Face coverings should be worn by staff and students (particularly older students) as feasible, and are most essential in times when physical distancing is difficult. Individuals should be frequently reminded not to touch the face covering and to [wash their hands](#) frequently. Information should be provided to staff, students, and students' families on [proper use, removal, and washing of cloth face coverings](#).

Note: [Cloth face coverings](#) should not be placed on: Children younger than 2 years old

- Anyone who has trouble breathing or is unconscious
- Anyone who is incapacitated or otherwise unable to remove the cloth face covering without assistance

[Cloth face coverings](#) are

Personal Protective Equipment (PPE)

In addition to following guidance around regular hand washing, hand sanitizing, daily cleaning and disinfecting of high-touch surfaces, and encouraging social distancing, the District plans to procure and distribute personal protective equipment for students and staff to use when in buildings. This equipment will include reusable masks for all students and staff, reusable face shields for instructional staff to use while teaching, KN95 masks for first responders, gloves and face shields for specific specialized staff groups, and additional items like gowns for nursing and health team members. Guidance will be provided to staff regarding the specific PPE that is expected for them based on their role and responsibilities. All PPE will be purchased centrally and delivered to locations before students and staff return to school and work. The District also plans to

PPE were not "centrally purchased and delivered to locations before students and staff return to school and work." Students were not given masks. Students wore masks they brought from home. (Declaration of Brian Peck) Mr. Peck himself was not provided with masks, nor any disinfectant wipes or hand sanitizers. Id. There was also no hand-washing or sanitizing station near the entrance of the school. Id.

No information was provided to staff, students, and students' families on proper use, removal, and washing of cloth face coverings.

An account from a teacher at Mumford High School stated that a student asked the administration for an inhaler from

<p>1 meant to protect other people 2 in case the wearer is 3 unknowingly infected but 4 does not have symptoms. 5 <u>Cloth face coverings</u> are not 6 surgical masks, respirators, or 7 other medical personal 8 protective equipment. 9 10 <i>See</i> CDC recommendations 11 on Considerations for 12 Schools, May 19, 2020 13 https://www.cdc.gov/coronavi- rus/2019- ncov/community/schools- childcare/schools.html</p>	<p>purchase a limited supply of back-up materials; however, it is the expectation that any visitors or volunteers provide their own masks if/when they are in buildings and that students and staff wash and reuse any purchased cloth masks. In addition to PPE, the District will purchase a supply of disinfectant wipes, and set up portable hand sanitizer dispensers for use in classrooms and high traffic areas. In addition, the Operations team will install plexiglass barriers at reception desks. <i>See</i> the DPSCD Reopening Plan, page 4</p>	<p>the nurse because he had severe asthma. The administrator told the student that the clinic was closed and that he should email her so she could help him inquire for help. (<i>See</i> Declaration of Brian Peck) In this case, the school did not have a medical staff stationed at the school in case of medical emergency and/or suspected cases of COVID-19. Plexiglass barriers were also not installed in the school. Id.</p>
<p>Adequate Supplies Support healthy hygiene behaviors by providing adequate supplies, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), paper towels, tissues, disinfectant wipes, cloth face coverings (as feasible) and no-touch/foot-pedal trash cans. <i>See</i> CDC recommendations on Considerations for</p>	<p>In addition to PPE, the District will purchase a supply of disinfectant wipes, and set up portable hand sanitizer dispensers for use in classrooms and high traffic areas. In addition, the Operations team will install plexiglass barriers at reception desks. <i>See</i> DPSCD Reopening Plan, page 4 The District is committed to providing supplies of personal protective equipment to students and</p>	<p>A teacher from Mumford made an account that he was not given masks, disinfectant wipes, and sanitizers. Hand sanitizers are also not readily available at high traffic areas like the school entrance. (<i>See</i> Declaration of Brian Peck)</p>

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CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

<p>Schools, May 19, 2020 https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html</p>	<p>staff members...Additional items such as hand sanitizer and disinfectant wipes will be provided to each classroom on a regular basis throughout the year...The District will monitor the usage of these materials and make decisions about additional purchases should the need arise. <i>Id.</i> at 21</p>	
<p>Staggered Scheduling Stagger arrival and drop-off times or locations by cohort or put in place other protocols to limit contact between cohorts and direct contact with parents as much as possible.</p> <p>When possible, use flexible worksites (e.g., telework) and flexible work hours (e.g., staggered shifts) to help establish policies and practices for social distancing (maintaining distance of approximately 6 feet) between employees and others, especially if social distancing is recommended by state and local health authorities.</p> <p><i>See</i> CDC recommendations on Considerations for Schools, May 19, 2020</p>	<p>No Staggered Scheduling. Same schedule for K-12 across board Teachers: 8:30am – 1:00pm Students 8:30am – 12:30pm <i>See</i> the DPSCD Reopening Plan, page 12</p>	<p>No Staggered Scheduling. Same schedule for K-12 across board Teachers: 8:30am – 1:00pm Students 8:30am – 12:30pm <i>See</i> the DPSCD Reopening Plan, page 12</p>

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

1	https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html		
2			
3			
4			
5	Water Systems	No mention of water	Status unknown
6	To minimize the risk of	systems check or status of	
7	Legionnaire's disease and	its safety and functioning	
8	other diseases associated with	standards	
9	water, take steps to ensure		
10	that all water systems and		
11	features (e.g., sink faucets,		
12	drinking fountains, decorative		
13	fountains) are safe to use after		
14	a prolonged facility		
15	shutdown. Drinking fountains		
16	should be cleaned and		
17	sanitized, but encourage staff		
18	and students to bring their		
19	own water to minimize use		
20	and touching of water		
21	fountains.		
22	See CDC recommendations		
23	on Considerations for		
24	Schools, May 19, 2020		
	https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html		
	Physical Barriers and Guides	Markings and signage on	Accounts from
	• Install physical barriers,	floors and walls ensuring	teacher Brian Peck
	such as sneeze guards and	that staff maintain distance	that at Mumford
	partitions, particularly in	when waiting to enter the	High School, there
	areas where it is difficult	building.	is no signage, no
	for individuals to remain at	See DPSCD Reopening	marking on the
	least 6 feet apart (e.g.,	Plan, page 10	floor. There are no
		Multiple entry and exit	physical barriers or

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<p>reception desks).</p> <ul style="list-style-type: none"> • Provide physical guides, such as tape on floors or sidewalks and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times (e.g. guides for creating “one way routes” in hallways). 	<p>points may be established at larger schools to allow for social distancing during arrival and dismissal. Signage will also reiterate the need to stay six feet apart while waiting to enter the building.</p> <p>Id. at 24</p>	<p>plexiglass set up. There is no tape or making on the ground for social distancing at the entrance to keep students and staff six feet apart while waiting to enter the building (See Declaration of Brian Peck)</p>
<p>Protections for Staff and Children at Higher Risk for Severe Illness from COVID-19</p> <p>Offer options for staff at higher risk for severe illness that limit their exposure risk (e.g., telework, modified job responsibilities).</p> <p>Offer options for students at higher risk of severe illness that limit their exposure risk (e.g., virtual learning opportunities).</p> <p>See CDC recommendations on Considerations for Schools, May 19, 2020 https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html</p>	<p>We hope all staff feels safe and comfortable enough to return and will assess these circumstances on an individual basis. The expectation is for all staff to return to work in the fall, however if individuals have underlying health conditions or are otherwise at risk, we encourage them to reach out to Employee Health Services at dps.ehs@detroitk12.org. see DPSCD Reopening Plan, page 25</p> <p>Safety</p> <p>Protocols:Medically Vulnerable Students and Staff</p> <p>Create a process for students/families and staff to self-identify as high risk for severe illness due to COVID-19 and have a plan</p>	<p>When DPSCD sent out notification to teachers, it does not have any plans to identify individuals at high risks. (See Exhibit E, email notification from Superintendent Nikolai Vitti)</p> <p>Students were not asked about their health conditions. A parent signed up for virtual summer school for her daughter. Instead of getting offered virtual classes, her daughter was placed in face-to-face summer school. She did not send her daughter to school on July 13 because</p>

	<p>in place to address requests for alternative learning arrangements or work reassignments. (Strongly Recommended)</p> <p>Note: The District plans to empower parents to decide if they would like their student to have face to face or online learning instruction. Each student will be engaged to determine if special needs must be addressed due to COVID-19 related home challenges.</p> <p>See DPSCD Reopening Plan, page 38</p>	<p>her daughter had suppressed immune system and had undergone five surgeries. When She made inquiries to the school district about her daughter's situation, she never got a response or any accommodations from the school district. (Declaration of Famika Edmond and Declaration of Autumn Carr; also see Exhibit to Edmond Declaration, Assignment Letter to Autumn Carr)</p>
<p>Designated COVID-19 Point of Contact</p> <p>Designate a staff person to be responsible for responding to COVID-19 concerns (e.g., school nurse). All school staff and families should know who this person is and how to contact them.</p> <p>See CDC recommendations on Considerations for Schools, May 19, 2020 https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html</p>	<p>An "isolation area" will be designated at all school buildings and open offices so that anyone who experiences COVID-19 symptoms or feels unwell, can be isolated from others while additional steps are taken to seek care. See DPSCD Reopening Plan, page 15</p> <p>Monitoring and Accountability</p> <p>As the District establishes safety guidelines for practices such as COVID-</p>	<p>The DPSCD Reopening Plan does not include a designated staff person who is responsible for responding to COVID-19 concerns. At Mumford, an administrator in charge told a student that there was no nurse in summer school and the clinic was</p>

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	<p>19 testing, temperature checks, social distancing, mask wearing, regular disinfecting, and limiting group gatherings, we will create ways for students, staff, and families to share feedback and report issues that may be unsafe. Concerns about reopening can be shared via a dedicated inbox info.reopen@detroitk12.org. In addition, any questions or concerns related to Operations (especially cleanliness, bathroom supplies, etc.) can be submitted via phone at 313-578-7018. Any concerns shared will be responded to within 24 hours by the appropriate department/team and a weekly status report of issues will be provided to the School Board for review.</p> <p>Id. at page 3</p>	<p>closed when the student asked for help for his asthma. (See Declaration of Brian Peck) Parents, teachers, bus drivers, and students were not provided with the information as to who is responsible for attending to COVID-19 concerns. A parent of a student who has suppressed his immune system signed up for virtual summer class to catch up with school work. Instead, she received in-person classes. When she reached out to DPSCD for inquiry, she was never given a response or accommodation. (See Declaration of Famika Edmond and Declaration of Autumn Carr)</p>
<p>Leave (Time Off) Policies and Excused Absence Policies</p> <p>Implement flexible sick leave policies and practices that</p>	<p>Will COVID-19 be considered a communicable disease so that staff who test positive will not have to use personal illness days</p>	<p>Will not have sick leave accommodation based on COVID-19.</p>

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

enable staff to stay home when they are sick, have been exposed, or caring for someone who is sick.

- Examine and revise policies for leave, telework, and employee compensation.
- Leave policies should be flexible and not punish people for taking time off, and should allow sick employees to stay home and away from co-workers. Leave policies should also account for employees who need to stay home with their children if there are school or childcare closures, or to care for sick family members.

Develop policies for return-to-school after COVID-19 illness. CDC's [criteria to discontinue home isolation and quarantine](#) can inform these policies.

See CDC recommendations on Considerations for Schools, May 19, 2020 <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

if they must self-quarantine?

Answer: No, currently that is not the case.

Question: What is the process when an employee is exposed to COVID-19 and must quarantine, but the employee does not have enough sick days, will the employee continue to receive pay?

Answer: Each individual situation regarding potential leave related to COVID-19 is unique. Any employee who may need to not attend work and is unable to telecommute based on their role should reach out to Employee Health Services to discuss their options at dps.ehs@detroitk12.org

See DPSCD Reopening Plan, page 26

A bus driver's account stated that he received information that DPSCD is hiring for bus drivers and if he did not accept the work, his unemployment benefits could be forfeited. (See Declaration of Keyshawn Seibert) In the assignment letter sent to the student Autumn Carr, attendance policy is "Students will be required to be in attendance, face to face, if assigned to face to face or virtually, if assigned to remote/virtual. If students are absent more than 3 days of summer school, they will be withdrawn for the remainder of the summer." See Exhibit to Edmond Declaration, Assignment Letter to Autumn Carr.

<p>Staff Training Train staff on all safety protocols.</p> <p>Conduct training virtually or ensure that social distancing is maintained during training. See CDC recommendations on Considerations for Schools, May 19, 2020 https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html</p>	<p>Phase 2 (June 22nd – July 6th) Much of the work essential for the District to prepare for summer school and the 2020-2021 school year is in-person work that cannot efficiently or effectively be done remotely. As such, the District reopens for in-person work in central offices and for 12-month employees. COVID-19 testing is required before employees come to work initially and all employees will participate in training on COVID-19 risk factors, mitigation measures, and District-specific protocols for how to stay safe. This training will be expanded in future phases and will be required for students. The training will be expanded to parents through the Parent Academy. In alignment with the most recent CDC guidance on school reopening, training topics will include (but are not limited to): Healthy hygiene practices including: -hand washing throughout day -how to responsibly wear face coverings</p>	<p>Did not provide any meaningful training to the teachers that could be passed on to students. Teachers were only sent a 20 minute powerpoint video prior to their returning to in-person instructions. (See email from Superintendent Nikolai Vitti)</p>
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1		-Maintaining clean workspaces through cleaning, disinfecting, and proper ventilation	
2		-Social distancing best practices	
3		-Limiting the sharing of materials	
4		<i>See</i> DPSCD Reopening Plan, page 10	
5			
6			
7			

8 While much remains unknown about COVID-19, what is known is that it is
9 a global pandemic that can lead to serious illness and death and is easily
10 transmitted. It attacks major body systems, and can cause debilitating lifelong
11 conditions among those who survive. There is no vaccine or cure. Science and
12 public-health guidelines require mass testing, social distancing, strict adherence to
13 wearing masks, hygiene, and repeated testing and aggressive contact-tracing to
14 identify and contain the epidemic. There must be adequate supplies, preparation,
15 and training to enact these measures.

17 Michigan Governor Whitmer’s Executive Order 2020-142 only provides for
18 the opening of school for the 2020-21 school year, and not summer school.
19 (Exhibit G) It also orders that no school district may reopen without its board
20 approving a Preparedness Plan that complies with the multiple “minimum”
21 requirements of Executive Order 2020-142. (Exhibit G)

1 DPSCD and Superintendent Vitti reopened schools on July 13, 2020 with no
2 Preparedness Plan in place and with no adequate preparation, notifying students,
3 teachers, and staff only days in advance. DPSCD notified parents such as Plaintiff
4 Famika Edmond that her child, whom she had requested virtual summer school,
5 must attend in-person summer school or be disenrolled from the program.
6

7 Nor does DPSCD's July 14 "DPSCD Reopening Plan" reopen schools with
8 an adequate testing infrastructure. Executive Order 2020-142 (Exhibit G) prevents
9 the reopening of schools until Michigan gets out of Phase 3 of Michigan's "Safe
10 Start Plan." Moving beyond Phase 3 according to the Plan means: "[T]he number
11 of new cases and deaths has fallen for a period of time, but overall case levels are
12 still high. When in the Improving [Phase 4] phase, most new outbreaks are quickly
13 identified, traced and contained *due to robust testing infrastructure and rapid*
14 *contact tracing.*" (Exhibit F, Michigan's "Safe Start Plan," p. 11) (emphasis
15 added).
16

17 DPSCD's plan states that testing will be inadequate to track the virus into
18 the fall: "The capacity for COVID-19 testing is improving by the week and can
19 likely support all students and staff being tested by September, but it is unclear
20 how frequently re-testing can occur, or when anti-body tests will be available at
21 scale." (Exhibit D, DPSCD Plan, p. 3) The plan refrains from requiring COVID-19
22 testing of students before reentering school until testing is more available:
23

1 “Students are not required to be tested for COVID-19. Student testing may be
2 reconsidered if tests are developed that provide a rapid response and are widely
3 available.” (Exhibit D, p. 10)

4 DPSCD’s plan does not provide for testing DPSCD students and staff who
5 display symptoms of COVID-19. In the event of a person testing positive for
6 COVID-19, DPSCD only plans to contact-trace for individuals who were within
7 six feet of the confirmed-positive individual for more than 15 minutes. (Exhibit D,
8 pp. 5, 13) DPSCD only notifies people who meet this condition, that they were
9 exposed to COVID-19. COVID-19 can transmit between individuals in much less
10 than 15 minutes. This violates CDC guidelines and all public health advice. In the
11 event of a positive COVID-19 case, DPSCD’s plan allows for hiding vital public-
12 health information from many people within a school who likely were exposed to
13 COVID-19, and by hiding this information hopes to keep the school open
14 regardless of risk to children, teachers, and staff.

15 Defendants have knowledge of the danger posed by reopening schools. When
16 the COVID-19 epidemic was less widespread than it is now, Michigan closed its
17 schools. Israel now has an outbreak that outpaces even the United States due to a
18 premature opening of its schools. See *supra* at 7. Michigan Governor Whitmer has
19 been rolling back reopening plans in Michigan. On July 1, 2020, Governor Whitmer
20 signed Executive Order 2020-143 which closes bars because “[b]ars have many
21
22
23
24

1 features that facilitate the spread of COVID-19: they are often crowded, indoors,
2 and poorly ventilated.” On July 17, 2020, Governor Whitmer signed Executive
3 Order 2020-154 to provide “essential protection to vulnerable Michiganders.” It
4 provides for remote public meetings and for state government officials to conduct
5 business remotely. The current spike in COVID-19 infections in Michigan has
6 prompted Governor Whitmer to express "concern" about reopening Michigan
7 schools in the fall.

9 Defendants’ conduct shocks the conscience: while government officials work
10 remotely, they are exposing Detroit’s children and Michigan’s most vulnerable to
11 COVID-19.

12
13 Defendants’ decision to fully reopen DPSCD for in-person instruction
14 departs from every other district in Michigan. Just as how state officials arbitrarily
15 administering an “interpretation test” for voter registration to discriminatorily deny
16 black people the right to vote violates the Equal Protection Clause, *Louisiana v.*
17 *United States*, 380 U.S. 145 (1965), Michigan officials violate the Equal Protection
18 clause by arbitrarily and discriminatorily applying and/or failing to apply state law
19 and executive orders to the detriment of Detroit’s majority-black student
20 population.

21
22 Since the beginning of the COVID-19 pandemic, black people, and majority-
23 black cities like Detroit, have borne a disproportionate brunt of the pandemic.

1 While black people comprise 14.1 percent of the people of Michigan, they have
2 suffered about 40 percent of the deaths from COVID-19 in Michigan. Detroit also is
3 the city hardest-hit by COVID-19. As of July 11, 2020, while the City of Detroit
4 has 6.7% of Michigan's population, it has reported 11,928 (17.1%) of the state's
5 69,625 confirmed COVID-19 cases.
6

7 Governor Whitmer's Executive Order 2020-142 issues guidance for
8 reopening schools for the 2020-21 school year only, and even then only pursuant to
9 minimum safety requirements and an approved plan. Defendants are moving
10 forward anyway with fully reopening school buildings for summer school in
11 Detroit, and only in Detroit, without a plan and without preparation.
12

13 Detroit is being used as an experimenting ground before conducting a
14 broader reopening for Michigan's children. This experiment is deadly and
15 unnecessary: Michigan can look to the CDC's guidelines and follow what other
16 countries have done, who brought their overall infection rates under control and
17 reopened gradually while mass, regular testing and contact tracing.
18

19 The Defendants' decision to choose Detroit, a majority-black city, as an
20 experiment for Michigan to reopen its school sites for in-person instruction for
21 summer school deliberately exposes Detroit children, teachers, staff, and their
22 parents to potential serious illness or death with the knowledge of exposure and
23

1 violation of guidelines to prevent such exposure, violates their due process and
2 equal protection rights under the U.S. Constitution.

3 **CONCLUSION**

4
5 For the reasons stated above, Plaintiffs' Motion should be granted.

6 By Plaintiffs' Attorneys,
7 UNITED FOR EQUALITY AND
8 AFFIRMATIVE ACTION LEGAL DEFENSE
9 FUND (UEAALDF)

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19 Dated: July 20, 2020
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23